

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B03

PLR-134002-06

Date:

April 25, 2007

LEGEND:

A =

B =

C =

D =

Trust 1 =

Trust 2 =

Date 1 =

Dear :

This letter responds to your letter dated June 25, 2006, and subsequent correspondence requesting a ruling that Trust 1 and Trust 2 are grantor trusts under § 671 of the Internal Revenue Code.

FACTS

The information submitted states that on Date 1, A created Trust 1 for the benefit of C, and Trust 2 for the benefit of D (collectively Trusts). B, A's spouse, is the sole trustee of Trusts (Trustee).

Article III of Trusts provides, in part, that in each calendar year the beneficiary has the power to withdraw from the trust estate amounts (not to exceed the annual gift tax exclusion) added thereto during the calendar year except for additions made by will or other testamentary disposition and by a custodian for the beneficiary. The withdrawal power is not cumulative from year to year but must be exercised within thirty days after the Trustee's mailing of notice of transfer of assets to the trust estate.

Paragraph 4.1 of Article IV of Trusts provides, in part, that the Trustee shall distribute one-third of the principal at age thirty, one-half of the principal balance at age thirty-five and the remainder of the principal at age forty to the beneficiary. Until the beneficiary attains age twenty-five, the Trustee may pay to or for the beneficiary's benefit as much principal or net income as the Trustee deems necessary or proper in its sole discretion for the support, health, maintenance, and education of the beneficiary. After the beneficiary attains age twenty-five, the Trustee shall pay the entire net income to the beneficiary in quarter annual or more frequent installments, and the Trustee shall pay to or for the beneficiary's benefit as much principal as the Trustee deems necessary or proper in its sole discretion for the support, health, maintenance and education of the beneficiary.

Paragraph 4.5 of Article IV of Trusts provides, in part, that notwithstanding the other provisions in Article IV, B, in her sole and unfettered discretion may direct the Trustee during her lifetime or in her Last Will and Testament to (i) distribute all or any part of the net income for the benefit of the current income beneficiary sooner than otherwise provided in Article IV, (ii) withhold any distribution of net income and accumulate such net income for distribution at a later time to the current income beneficiary as part of the principal of the trust estate, (iii) distribute all or any part of the principal to or for the benefit of the current income beneficiary sooner than otherwise provided in Article IV, or (iv) withhold any distributions of principal for distribution at a later time to the current income beneficiary.

LAW AND ANALYSIS

Section 671 provides that where it is specified in subpart E of Part I of subchapter J that the grantor or another person shall be treated as the owner of any portion of a trust, there shall then be included in computing the taxable income and credits of the grantor or the other person those items of income, deductions, and credits against tax of the trust which are attributable to that portion of the trust to the extent that such items would be taken into account under chapter 1 in computing taxable income or credits against the tax of an individual.

Section 672(a) provides for purposes of subpart E, the term “adverse party” means any person having a substantial beneficial interest in the trust which would be adversely affected by the exercise or nonexercise of the power which he possesses respecting the trust.

Section 672(e)(1)(A) provides that a grantor shall be treated as holding any power or interest held by any individual who was the spouse of the grantor at the time of the creation of such power or interest.

Sections 673 through 678 specify the circumstances under which the grantor or a person other than the grantor is treated as owner of a portion of a trust.

Section 674(a) provides that the grantor shall be treated as the owner of any portion of a trust in respect of which the beneficial enjoyment of the corpus or the income therefrom is subject to a power of disposition, exercisable by the grantor or a nonadverse party, or both without the approval or consent of any adverse party.

Section 674(b)(5)(A) provides that § 674(a) shall not apply to a power to distribute corpus to or for a beneficiary or beneficiaries or to or for a class of beneficiaries (whether or not income beneficiaries) provided that the power is limited by a reasonably definite standard which is set forth in the trust instrument.

Section 674(b)(6) provides that § 674(a) shall not apply to the power to distribute or apply income to or for any current income beneficiary or to accumulate the income for him, provided that any accumulated income must ultimately be payable (A) to the beneficiary from whom distribution or application is withheld, to his estate, or to his appointees (or persons named as alternative takers in default of appointment) provided that such beneficiary possesses a power of appointment which does not exclude from the class of possible appointees any person other than the beneficiary, his estate, his creditors, or creditors of his estate, or (B) on termination of the trust, or in conjunction with a distribution of corpus which is augmented by such accumulated income, to the current income beneficiaries in shares which have been irrevocably specified in the trust instrument.

Section 678(a) provides that a person other than the grantor shall be treated as the owner of any portion of a trust with respect to which (1) such person has a power exercisable solely by himself to vest the corpus or the income therefrom in himself, or

(2) the person has previously partially released or otherwise modified such a power and after the release or modification retains such control as would, within the principles of §§ 671 to 677, inclusive, subject a grantor of a trust to treatment as the owner thereof.

Section 678(b) provides that § 678(a) shall not apply with respect to a power over income, as originally granted or thereafter modified, if the grantor of the trust is otherwise treated as the owner under the provisions of subpart E other than § 678.

Section 1.671-3(b)(3) of the Income Tax Regulations provides, in part, that a grantor includes both ordinary income and other income allocable to corpus in the portion the grantor is treated as owning if the grantor is treated under § 674 or § 676 as an owner because of a power over corpus which can affect income received within a period such that the grantor would be treated as an owner under § 673 if the power were a reversionary interest.

CONCLUSION

Under the terms of Trusts, B, A's spouse, has the power to withhold any distribution of principal for distribution at a later time to the current income beneficiary. Therefore, we conclude that A is treated as the owner of the entire Trust 1 and the entire Trust 2 under §§ 674(a) and 678(b). Accordingly, there shall be included in computing the taxable income and credits of A all items of income, deductions, and credits against tax of Trust 1 and Trust 2 under § 671.

Except as expressly provided herein, we express or imply no opinion concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion on the federal tax consequences of an intended merger of Trusts and on whether other trusts involved in the contemplated merger are grantor trusts for federal tax purposes.

In accordance with a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

/s/

Mary Beth Collins
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)

A copy of this letter

A copy for § 6110 purposes